IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

Crl.MC.No. 166 of 2007()

CMP.3095/2005 of JUDL.MAGISTRATE OF FIRST CLASS, VADAKARA

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PETITIONER:

PATHU HAIJUMMA, W/O.AMMAD HAJI,
AGED 77 YEARS, THATTANTAVIDA HOUSE,
KURINHALIYHOD, VADAKARA TALUK,
KOZHIKODE DISTRICT.

BY ADV. SRI.C.VALSALAN
SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V

RESPONDENTS:

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1. K.M. ANDY, S/O.CHEKKOTTY,
AGED 53 YEARS, KANIYANKANDIYIL HOUSE,
NADAKKUTHAZHA AMSOM DESOM, VADAKARA.

2. MOOSA HAJI, S/O.AMMAD HAJI,
AGED 60 YEARS, THATTANTAVIDA HOUSE,
KURINHALIYODE, VADAKARA,
KOZHIKODE DISTRICT.

3. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB.
SRI.SUNNY MATHEW
SRI.MANSOOR.B.H.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 01/02/2007, ALONG WITH CRMC NO. 205 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NOs. 166 & 205 OF 2007

Dated this the 1st day of February, 2007

ORDER

These petitions are filed by the common petitioner against a common order under which a petition filed by her for release of a vehicle to her was dismissed and the petition filed by the 1st respondent for release of the vehicle to him was allowed subject to conditions.

2. This case has a chequered career by now. It would be profitable to attempt a synoptic resume of the events which had led to these petitions now. Stage carriage No. KL 11C 9549 is a bus which stood registered in the name of one Ammad Haji – the husband of the petitioner. The 2nd respondent in Crl.M.C.No.166/07 is the son of the said Ammad Haji and the petitioner herein. The said Ammad Haji allegedly filed a complaint before the police on 18/9/95. No action was taken allegedly by the police and thereupon the said Ammad Haji filed a complaint dated 12/12/95 before the learned Magistrate. The said complaint was referred to the

police under Sec.156(3) of the Cr.P.C. and a crime was registered as Crime No.92/96 of Vadakara Police Station. The vehicle involved (I shall hereinafter refer it as `the bus') was seized by the police on 14/2/96.

3. The said Ammad Haji had filed that complaint against three individuals. The 1st accused was one Illikkal Joseph. The 2nd accused was Moosa – son of Ammad Haji, and the 3rd accused was one Raja Kurup – a Manager of Moosa. The crux of the allegations raised in the said complaint is that the three accused persons, in furtherance of their common design to defraud the said Ammad Haji, had taken away the bus and had created documents to make it appear that the bus had been sold to the said Illikkal Joseph. A copy of that agreement is produced as Ext-A7 before the court below.

4. Pending investigation, the vehicle was released to the custody of the said Ammad Haji. The challenge raised by the 1st respondent did not meet with any success. Ammad Haji was, thus, in possession of the bus as released to him by the court from 8/3/96. Ammad Haji died on 30/12/02. Prior to his death, he is alleged to have gifted the bus to his wife – the petitioner herein, on 28/9/02. The gift in her favour and the fact that she

has become the registered owner is seen endorsed in the Registration Certificate Book from17/1/05.

5. After investigation, the police had filed a charge sheet and on such charge sheet, cognizance was taken against all the three accused referred above as C.C.No.1063/99 before the Judicial Magistrate of the First Class, Vadakara. After the charge sheet was filed, claims were made for release of the bus by the 1st respondent and Ammad Haji. After the death of Ammad Haji, it is the petitioner who is prosecuting the claim for release of the bus in her favour.

6. It is unnecessary to advert to the various events that had taken place in such application for release of the vehicle. Suffice it to say that ultimately, by the impugned order, there has been a direction to release the bus to the 1st respondent herein. The claim of the petitioner was rejected and the claim of the 1st respondent was accepted by the learned Magistrate.

7. Before the learned Magistrate, no witnesses were examined. Exts.A1 to A9 were marked on the side of the 1st respondent and Exts.B1 to B7 series were marked on the side of the petitioner herein. Of the three accused, who faced indictment, the 3rd accused is absconding and has not been

traced. The trial commenced against accused 1 and 2; but the 2nd accused – son of the petitioner herein, started absconding and so, the trial against the 1st accused alone proceeded. By judgment dated 31/5/02 in C.C.No.1063/99, the learned Judicial Magistrate of the First Class, Vadakara, came to the conclusion that no offence has been committed by the 1st respondent – Illikkal Joseph. He was acquitted. A specific finding is seen recorded that no offence has been committed in respect of the bus by the accused.

8. The case against the 2nd and 3rd accused was split up and renumbered as C.C.No.317/02. The 2nd accused – the son of the petitioner, faced trial in that case and it is submitted before me that the 2nd accused has also been found not guilty and acquitted holding that no offence has been proved against him. In the case against the 3rd accused – Raja Kurup, trial has not commenced yet as he is absconding and has not been traced.

9. The vehicle has been in the possession of Ammad Haji and later the petitioner from 8/3/96 till now. The 1st respondent claims to be in possession of the bus through Illikkal Joseph who had trasnferred his rights in favour of one Bhaskaran from whom the 1st respondent – Andy, claims to have come into possession of

the bus under an agreement dated 28/8/95 which is produced as Ext.A1 before the court below.

10. The learned Magistrate has now come to a conclusion, in the two separate trials held, that the 1st accused and the 2nd accused have not committed any offence in respect of the bus. The trial against the 3rd accused has not commenced. Final orders under Sec.452 of the Cr.P.C. can, thus, be passed only after the trial against the 3rd accused is also completed. The present disposal has to be reckoned as one under Sec.451 of the Cr.P.C.

11. On the principles of law applicable, there cannot be any dispute. Where no offence is committed in respect of a property involved in a criminal trial, normally and ordinarily such property must be restored to the possession of the person from whose possession the seizure was effected. This is not a rule which does not admit of exceptions; but certainly satisfactory reasons must be shown to exist to justify such deviation.

12. In so far as a motor vehicle is concerned, the same is to be reckoned as movable property and title passes when there is delivery with the intention of transferring title. The entry in

the R.C. Book is only evidence of such title and not title itself. In law, it is certainly possible for a person who is not a registered owner as per the Registration Certificate to be the real and actual owner of such vehicle.

13. A criminal court under Sec.457/451 or 452 of the Cr.P.C. is not expected to make a final authentic pronouncement on the title or the right of the parties for possession. A criminal court is only expected to decide who is the best person who can be entrusted with possession of the property in question. It is for the civil courts to pass appropriate authentic orders on the title and rights after considering the contentions of the rival contestants.

14. In this case, admittedly. a civil suit is pending before the Sub Court, Vadakara, as O.S.No.94/06. The petitioner herein has initiated the said civil proceedings. The petitioner, her son Moosa, Illikkal Joseph , the 1st respondent herein – Andy, are all parties to that civil suit. Admittedly, no direction has been sought or obtained for the custody of the bus pending disposal of the civil suit. The petitioner asserts in that plaint that she is in possession of the bus. Obviously, such a possession is obtained through court as per the directions issued earlier

under Sec.451 of the Cr.P.C. The learned counsel for the petitioner submits that the petitioner shall be taking steps to claim possession of the vehicle by filing an appropriate application before the civil court. Suffice it to say that no such petition is now pending before the civil court by any one.

15. I have no hesitation to agree that it is for the civil court in such proceedings to pass orders regarding custody of the vehicle pending resolution of the dispute regarding title and possession raised in the civil suit – O.S.No.94/06. The purpose of the direction by a criminal court under Sec.451 of the Cr.P.C. is only to make arrangements till the civil court passes appropriate orders regarding such custody pending the suit and title and possession after the suit.

16. The learned Magistrate, after considering all the relevant inputs, has now come to the conclusion that the 1st respondent is the proper person to whom custody can be given under Sec.451 of the Cr.P.C. The short question is whether invoking the jurisdiction under Sec.482 of the Cr.P.C. the said decision deserves to be interfered. It is trite that powers under Sec.482 of the Cr.P.C. have to be invoked sparingly and in exceptional cases and the crucial question is whether there is

failure/miscarriage of justice by the impugned direction.

17. The 1st respondent claims under Illikkal Joseph who had obtained the vehicle from Moosa – son of the petitioner as per agreement dated 5/8/95 (Ext.A7 before the court below). The 1st respondent claims under Illikkal Joseph, of course, through one Bhaskaran. Illikkal Joseph has asserted before the court below that the 1st respondent is in possession through him. The crucial question hence is whether Illikkal Joseph is entitled to get possession of the bus. If Illikkal Joseph is entitled to get possession of the bus, the 1st respondent who claims under Illikkal Joseph as admitted and asserted by Illikkal Joseph will be entitled to get possession.

18. Though there is an allegation raised in the crime that Illikkal Joseph, Moosa and Raja Kurup had committed the offences under Sections 420, 427 and 379 read with 34 I.P.C in two trials that have already been held, a conclusion has been reached by the court on the evidence available that no such offence has been committed. If that be so, in the absence of evidence of commission of any offence, the possession must be returned to Illikkal Joseph who claims under Ext.A7 or the person claiming through him. I have been taken through the

relevant findings in the judgment dated 31/5/02, a copy of which is produced as Annexure-R1(d) which have now become final without challenge. Similar findings are entered in the judgment in the trial held against the 2nd accused - Moosa also, it is submitted, though copy of the judgment is not produced before me.

19. To me, it appears that the 1st respondent does certainly have better and superior claim to get possession of the bus till the civil court passes appropriate orders regarding custody pending disposal of O.S.94/06. No proof of commission of any crime having been adduced in the two successive trials against Illikkal Joseph and Moosa, it may be idle to assume that in the prosecution pending against the 3rd accused, such evidence would surface. If no offence is proved, as stated earlier, possession has got to be returned to the person from whose custody the vehicle has been seized by the police. The petitioner and her predecessor - Ammad Haji do not have a case that the vehicle was seized from their possession. Illikkal Joseph has a case that the vehicle was in his possession and he had handed over the vehicle to the 1st respondent. That is the case of the 1st respondent also. Be that as it may, there is no dispute that the

petitioner or Ammad Haji were not in possession of the vehicle on the date when the complaint was made and the crime was registered.

20. The learned counsel for the petitioner asserts that the petitioner is the registered owner of the vehicle. The course followed by Ammad Haji of transferring the vehicle to the name of the petitioner, after interim custody of the vehicle was released to him under Section 451 Cr.P.C, cannot clothe the petitioner with any superior rights - more than what Ammad Haji himself had. The fact that the petitioner is shown to be the registered owner is not, in these circumstances, of any crucial significance or relevance. It is contended that Illikkal Joseph had himself agreed that he is liable to pay compensation to Ammad Haji for his possession of the vehicle during the period 1/8/95 to 8/3/96. A suit was filed by Ammad Haji claiming amounts as compensation for deprivation of possession during that period. No finding on merits has been rendered by the civil court. There was an alleged compromise between Ammad Haji and Illikkal Joseph during the pendency of the suit before the Lok Adalath and Illikkal Joseph had allegedly agreed to pay amounts to Ammad Haji whereupon the suit was decreed as

compromised. The said course adopted by Illikkal Joseph cannot also, in the facts and circumstances of the case, deliver to Ammad Haji or the petitioner any superior rights to keep the vehicle in possession over that of the 1st respondent to whom Illikkal Joseph had admittedly handed over possession of the vehicle. The alleged subsequent settlement of the dispute between Illikkal Joseph and Ammad Haji without the junction of the petitioner who had by then staked a claim for release of the vehicle to him is not inspiring. At any rate, that alleged settlement cannot defeat the claim of the 1st respondent now.

21. The learned counsel for the petitioner contends that if the petitioner continues to be the registered owner and the 1st respondent plies the vehicle, it might result in unnecessary complications. That, according to me, is not sufficient to deny relief to the 1st respondent if the 1st respondent is otherwise found to be entitled to possession. I have already chosen to concur with the findings of the court below that the 1st respondent has superior claim to remain in possession

22. I am, in these circumstances, satisfied that the challenge raised in these Crl.M.Cs. is without merit. However, I am satisfied that the learned Magistrate must insist that the 1st

respondent undertakes in the bond to be executed by him to produce the vehicle as and when directed by the civil court also. Such an additional stipulation must be insisted by the learned Magistrate.

23. In the result, these Crl.M.Cs. are dismissed subject to the observations in para-22 above. I may, however, hasten to observe that the 1st respondent will be entitled to keep possession of the vehicle only subject to interim or final orders that may be passed by the civil court in O.S.94 of 2006. If either of the parties files such an application for custody pending disposal of the suit before the Sub Court, Vadakara, in O.S.94/06, the learned Subordinate Judge must proceed to pass appropriate orders as expeditiously as possible.

24. Lest any unintended impressions be conveyed, I make it absolutely clear that the civil court must dispose of the matter on the basis of the materials placed before it and should not, in any way, be influenced by the observations made by the criminal court or by this Court in this common order or earlier in other orders passed by this Court relating to the claim under Section 451/457 of the Cr.P.C. Appropriate decisions will have to be taken on the basis of the materials placed before the civil court

uninfluenced in any manner by the orders of the criminal court or orders passed by this Court in challenges raised against the orders passed by the civil court.

25. Hand over a copy of this order to both counsel.

(R. BASANT, JUDGE)

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